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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 NEVADA PARTNERS, INC.,

8 Plaintiff(s),

9 v.

10 WORKFORCE CONNECTIONS, et al.,

11 Defendant(s).

Case No. 2:19-CV-767 JCM (CWH)

ORDER

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13 Presently before the court is plaintiff Nevada Partners, Inc.'s ("Nevada Partners") motion
14 for temporary restraining order. (ECF No. 24).

15 Also before the court is Nevada Partners' motion for preliminary injunction. (ECF No.
16 25). Defendants Workforce Connections and Jaime Cruz filed a response (ECF No. 30), to
17 which Nevada Partners replied (ECF No. 31).

18 **I. Facts**

19 This action arises from a dispute regarding Workforce Connections' award of federal
20 grants in the amount of \$10,000,000 to ResCare Workforce Services ("ResCare"), which is an
21 organization that matches job applicants with employers. (ECF Nos. 1, 24-9).

22 Workforce Connections is Southern Nevada's local workforce development board. (ECF
23 No. 24). Among its various duties, Workforce Connections distributes federal grants for the
24 improvement of employment services pursuant to the Workforce Innovation and Opportunity
25 Act ("WIOA"), 29 U.S.C. § 3102 et seq. *Id.* Local boards award WIOA grants on a competitive
26 basis, in which the applicants with the best performance are more likely to receive funds. *See*
27 (ECF Nos. 24, 30); 29 U.S.C. § 1322(d)(10)(B)(i); NRS 232.935(4)(d)(1).
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1 From 2015 to 2019, Workforce Connections distributed over \$13,000,000 to Nevada
2 Partners. (ECF No. 24-1). Nevada Partners used those funds to assist thousands of residents
3 with job readiness services and provide federal tax return assistance. *Id.* Workforce
4 Connections also awarded ResCare millions of dollars in grants during this time period. (ECF
5 No. 24-9).¹ The record before the court does not indicate to the total amount of those grants.

6 In 2018, Workforce Connections began a new round of requests for proposals to fund
7 WIOA programs from July 2019 to June 2022. (ECF Nos. 24, 30). The new application process
8 had two substantial changes: (1) past performance evaluations were moved from the initial
9 technical review stage to the ad hoc selection panel's ranking of programs and (2) the
10 precondition that grantees cover their rent costs was replaced with a "cash match" requirement.
11 (ECF Nos. 24-13, 30, 30-1, 30-2, 30-3). The "cash match" provision required applicants to
12 match two percent of their requested grant amount in cash resources. (ECF Nos. 24-13, 24-45).

13 On March 13, 2019, Workforce Connections convened a meeting in which it planned to
14 award \$10,000,000 to ResCare and no WIOA funding to Nevada Partners, consistent with the ad
15 hoc selection panel's recommendation. (ECF Nos. 24-21, 24-27). Various individuals at the
16 meeting raised concerns regarding Workforce Connections' plan. (ECF No. 24-27). The
17 primary points of contention were that the programs committee relied on inaccurate materials
18 and that ResCare allegedly performed worse than other applicants that the ad hoc selection panel
19 did not recommend for funding. (ECF Nos. 24-22, 24-27). In response, Workforce Connections
20 continued the meeting to May 9, 2019. (ECF No. 24-27).

21 On the same day that Workforce Connections reconvened, Governor Steve Sisolak sent a
22 letter to the board stating that the executive director of the Governor's Office of Workforce
23 Innovation found that the new grant distribution process "does not appear to violate any rules,
24 policies, or laws." (ECF No. 24-25). The governor also expressed concern that awarding "the
25 bulk of the available funds to one entity may have created a perception of favoritism . . ." *Id.* At
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28 ¹ The parties represent that during this time period ResCare operated out of Workforce
Connections' facilities rent-free. (ECF Nos. 24, 30, 31).

1 the meeting, Workforce Connections considered the letter and awarded \$10,000,000 to ResCare.
2 (ECF No. 24-30). The WIOA grants begin disbursing on July 1, 2019. (ECF No. 24-22).

3 On May 3, 2019, Nevada Partners initiated this action, asserting eight causes of action:
4 (1) violation of procedural due process; (2) violation of substantive due process; (3) violation of
5 equal protection; (4) violation of Nevada's open meeting law, NRS 241.020; (5) violation of
6 WIOA's competitive process requirement, 29 U.S.C. § 3122 *et seq.*; (6) violation of WIOA's
7 performance accountability measures requirement, 29 U.S.C. § 3141 *et seq.*; (7) violation of
8 WIOA's conflict of interest provision, 29 U.S.C. § 3122(h) *et seq.*; and (8) injunctive relief.
9 (ECF No. 1).

10 Now, Nevada Partners has filed a motion for preliminary injunction requesting that the
11 court enjoin the disbursement of \$10,000,000 in WIOA grants to ResCare and require Workforce
12 Connections to continue disbursing funds consistent with its 2015–2019 grant allocation scheme
13 until the resolution of this litigation. (ECF No. 25).

14 **II. Legal Standard**

15 Federal Rule of Civil Procedure 65 provides that the court may issue a preliminary
16 injunction on notice to the adverse party. Fed. R. Civ. P. 65(a)(1). A preliminary injunction
17 seeks to preserve the status quo and prevent irreparable harm from occurring before a judgment
18 is issued. *Textile Unlimited Inc. v. BMH & Co.*, 240 F.3d 781, 786 (9th Cir. 2001).

19 The Supreme Court held that courts must consider the following elements in determining
20 whether to issue a preliminary injunction: (1) likelihood of success on the merits; (2) likelihood
21 of irreparable injury if preliminary relief is not granted; (3) balance of hardships; and (4)
22 advancement of the public interest. *Winter v. N.R.D.C.*, 555 U.S. 7, 20 (2008). The test is
23 conjunctive, meaning the party seeking the injunction must satisfy each element.

24 Additionally, post-*Winter*, the Ninth Circuit has maintained its serious question and
25 sliding scale tests. See *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir.
26 2011). “Under this approach, the elements of the preliminary injunction test are balanced, so that
27 a stronger showing of one element may offset a weaker showing of another.” *Id.*
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1 “Serious questions going to the merits and a balance of hardships that tips sharply
2 towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also
3 shows that there is a likelihood of irreparable injury and that the injunction is in the public
4 interest.” *Id.* at 1135.

5 **III. Discussion**

6 Litigants seeking a preliminary injunction have a burden to satisfy the four elements
7 above. *See Winter*, 555 U.S. at 20. The court will address each element to determine whether
8 Nevada Partners’ request for a preliminary injunction has merit.

9 *A. Likelihood of success on the merits*

10 Nevada Partners argues in its motion that it is likely to succeed on its first, second, third,
11 fifth, sixth, and seventh causes of action. (ECF No. 25). The court disagrees.

12 *i. Procedural due process*

13 To prevail on a procedural due process claim, a plaintiff must show “(1) a liberty or
14 property interest protected by the constitution; (2) a deprivation of the interest by the
15 government; and (3) lack of process.” *Portman v. County of Santa Clara*, 995 F.2d 898, 904 (9th
16 Cir. 1993).

17 The Due Process Clause of the Fourteenth Amendment protects government benefits only
18 if a plaintiff has a “legitimate claim of entitlement” based on “existing rules or understandings
19 that stem from an independent source such as state law . . .” *Bd. Of regents of State Colls. v.*
20 *Roth*, 408 U.S. 564, 577 (1972). “[A] benefit is not a protected entitlement if government
21 officials may grant or deny it in their discretion.” *Ching v. Mayorkas*, 725 F.3d 1149, 1155 (9th
22 Cir. 2013) (quoting *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756 (2005)).

23 Government officials used discretion when allocating the \$10,000,000 in WIOA grants
24 by using a competitive process to evaluate applicants. *See* (ECF No. 24-13, 24-27); *see also* 29
25 U.S.C. § 3122(d)(10)(B)(i). This process began with Workforce Connections’ announcement of
26 a new request for proposals followed by a bidder’s conference where Workforce Connections
27 answered questions from applicants. (ECF No. 24-46). All proposals that applicants eventually
28 submitted were screened at an initial technical review. *Id.* Then, a third party evaluated and

1 ranked the proposals. *Id.* Workforce Connections used information from the technical review
2 and third-party evaluation to recommend grant awards, which the programs committee and board
3 approved. *Id.*

4 The steps in Workforce Connections' competitive process required a global analysis of
5 proposals to determine which applicant is best suited for WIOA grants. These circumstances
6 precluded any "reasonable expectation of entitlement" because the request for proposals process
7 was not based on statutes or rules "couched in mandatory terms." *Wedges/Ledges of Cal., Inc. v.*
8 *City of Phx.*, 24 F.3d 56, 62 (9th Cir. 1994) (quotes and citations omitted); *see* 29 U.S.C. §§ §
9 3122(d)(10)(B)(i), 3123(16). Thus, as is the case with most applicants for government contracts,
10 Nevada Partners does not have a constitutionally protected property interest in the WIOA
11 grants.² *See Hi-Tech Rockfall Const., Inc. v. County of Maui*, No CV 08-00081 DAE-LEK, 2009
12 WL 529096, at *15 (D. Haw. Feb. 26, 2009) (holding that a disappointed bidder to a government
13 contract does not have a protected property interest in the contract).

14 *ii. Substantive due process*

15 Although the analysis of a procedural due process claim differs from the analysis of a
16 substantive due process claim, both causes of action require plaintiff to show a liberty or
17 property interest that the Fourteenth Amendment protects. *Oceanside Gold Institute, Inc. v. City*
18 *of Oceanside*, 876 F.2d 897 (9th Cir. 1989). Because Nevada Partners does not have a protected
19 property interest in the WIOA grants set to disburse on July 1, 2019, the substantive due process
20 claim is also unlikely to succeed on the merits.

21 *iii. Equal protection*

22 In resolving Nevada Partners' equal protection claim, the court must first determine the
23 applicable level of scrutiny. *Aleman v. Glickman*, 217 F.3d 1191, 1195 (9th Cir. 2000).
24 According to the allegations in the complaint, Workforce Connections did not engage in class-
25 based discrimination. (ECF No. 1). Instead, it singled out Nevada Partners for disfavored

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27 ² The court recognizes that Workforce Connections has previously awarded Nevada
28 Partners millions of dollars in WIOA grants. However, the "mere fact a person has received a
government benefit in the past, even for a considerable length of time, does not, without more,
rise to the level of a legitimate clam of entitlement. *Doran v. Houle*, 721 F.2d 1182, 1186 (9th
Cir. 1983).

1 treatment relative to similarly situated applicants. *Id.* Thus, Nevada Partners is asserting a “class
2 of one” claim, and rational basis applies. *See Gerhart v. Lake County, Montana*, 637 F.3d 1013,
3 1022 (2011).

4 For Nevada Partners to prevail on its “class of one” claim, it must show that Workforce
5 Connections “(1) intentionally (2) treated plaintiff differently than other similarly situated [grant
6 applicants], (3) without rational basis.” *Gerhart*, 637 F.3d at 1022 (citing *Willowbrook*, 528 U.S.
7 at 564). “[T]he rational basis prong of a ‘class of one’ claim turns on whether there is a rational
8 basis for the *distinction*, rather than the underlying government action.” *Id.* at 1023 (citing
9 *SeaRiver Maritime Financial Holdings Inc. v. Mineta*, 309 F.3d 662 (9th Cir. 2002)).

10 Nevada Partners primarily contends that Workforce Connections violated the Equal
11 Protection Clause because Workforce Connections did not have a rational basis to alter the past
12 performance evaluation factor and institute a “cash match” requirement. (ECF Nos. 24, 31).
13 However, these arguments pertain to Workforce Connections’ underlying actions rather than the
14 basis that Workforce Connections allegedly singled out Nevada Partners for disfavored
15 treatment. *See id.* Nevada Partners’ “class of one” claim cannot succeed on these grounds.

16 *iv. WIOA’s competitive process requirement*

17 WIOA requires local boards to award grants on a competitive basis. 29 U.S.C. §
18 3122(d)(10)(B)(i). In furtherance of this requirement, Workforce Connections developed a four-
19 year plan that established the procedure it would follow in distributing grants. *See* (ECF No. 24-
20 46). The plan also stated that Workforce Connections would follow the procedure “in a manner
21 that provides, to the maximum extent practical, free and open competition to all interested
22 parties.” *Id.*

23 Nevada Partners argues that Workforce Connections mismanaged its grant distribution
24 procedure by altering past performance evaluations and adding the “cash match” requirement.
25 (ECF Nos. 24, 31). Although these changes were substantial, nothing in the record indicates that
26 they harmed free and open competition. Workforce Connections simply integrated past
27 performance evaluations into the ad hoc selection panel’s ranking of programs. (ECF Nos. 30-1,
28 30-2, 30-3). And the “cash match” requirement was a replacement for the precondition that all

1 applicants cover their rent costs so that organizations that do not pay rent, such as ResCare,
2 would not have an unfair advantage. (ECF Nos. 24-45, 30). Accordingly, Nevada Partners has
3 not shown a likelihood of success or any meritorious question pertaining to Workforce
4 Connections' alleged violation of § 3122(d)(10)(B)(i).

5 *v. WIOA's performance accountability measures requirement*

6 WIOA establishes performance accountability measures that local boards use to assess
7 the effectiveness of an applicant's program. 29 U.S.C. § 3141(a). The relevant provisions of the
8 statute list several indicators of performance which focus on participants' unsubsidized
9 employment, education, and earnings after leaving a program. 29 U.S.C. § 3141(b)(2).

10 Nevada Partners contends that Workforce Connections violated the performance
11 accountability measures requirement by removing past performance evaluations from the request
12 for proposals process. (ECF No. 24). As the court explained in the previous section, Workforce
13 Connections did not forego past performance evaluations. Instead, it moved the evaluations
14 from the initial technical review to the ad hoc selection panel's process for scoring and ranking
15 programs. (ECF Nos. 30-1, 30-2, 30-3). Thus, Nevada Partners' sixth cause of action lacks
16 merit.

17 *vi. WIOA's conflict of interest provision*

18 WIOA's conflict of interest provision provides that a member of a local board or standing
19 committee cannot:

20 (1) vote on a matter under consideration by the local board—

21 (A) regarding the provision of services by such member (or by an entity
22 that such member represents); or

23 (B) that would provide direct financial benefit to such member or the
24 immediate family of such member; or

25 (2) engage in any other activity determined by the Governor to constitute a
26 conflict of interest as specified in the State plan.

27 29 U.S.C. § 3122(h).

28 Nevada Partners argues that several individuals from Workforce Connections had
conflicts of interest and did not abstain from participating in the request for proposals process.
(ECF No. 24). These individuals include John Martin, Peter Guzman, Louis Loupia, Lou

1 DeSalvio, and Marvin Gebers. *Id.* The record before the court indicates that Martin, who
2 participated in the grant distribution process, oversees Clark County Juvenile Justice Services
3 (“CCJJS”). (ECF No. 24-33). Martin’s mere affiliation with CCJJS does not create a conflict of
4 interest because CCJJS is the end/non-direct recipient of benefits, independent of which program
5 confers those benefits with WIOA grants. *See* (ECF No. 30).

6 The remaining individuals also participated in various capacities with Workforce
7 Connections’ grant distribution process. (ECF No. 24-33). They also participated in
8 organizations that deal with labor unions. *Id.* Like CCJJS, labor unions were not competing for
9 WIOA grants. *See* (ECF No. 30). They are organizations that indirectly benefit from Workforce
10 Connections’ distribution of grants by receiving referrals from programs providing workforce
11 services. *See id.* The attenuated relationship between labor unions and Workforce Connections
12 alone is not enough to create conflicts of interest.

13 In sum, Nevada Partners has not provided substantive evidence indicating concrete
14 conflicts of interest. Therefore, Nevada Partners is unlikely to prevail on this cause of action.

15 *B. Likelihood of irreparable injury*

16 Before a preliminary injunction may issue, the seeking party must show that he or she
17 will suffer an irreparable injury and otherwise lacks an adequate remedy at law. *Arizona Dream*
18 *Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014). The mere “possibility” of irreparable
19 harm is not enough to justify a preliminary injunction. *Winter*, 555 U.S. at 22. Rather, the
20 seeking party must establish that irreparable harm is likely and immediate. *Alliance for the Wild*
21 *Rockies*, 632 F.3d at 1131 (citing *Winter*, 555 U.S. at 22); *Caribbean Marine Servs. Co. v.*
22 *Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988).

23 Nevada Partners’ requested relief is two-fold. First, it requests that the court enjoin
24 WIOA grants in the amount of \$10,000,000. (ECF No. 25). Second, it requests that the court
25 issue a mandatory injunction requiring Workforce Connections to distribute funds to Nevada
26 Partners consistent with its 2015–2019 disbursement scheme. *Id.*

27 Absent an injunction, Nevada Partners may lose millions of dollars in federal funds. *See*
28 *id.* This economic injury cannot support a preliminary injunction because a future award of

1 damages would be an adequate legal remedy. *See Rent-A-Center, Inc. v. Canyon Television &*
2 *Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir. 1991); *see also Ali v. United States*, 932 F.
3 Supp. 1206, 1210 (N.D. Cal. 1996) (holding that being unable to bid for government contracts is
4 an economic injury).

5 With regards to the second prong of the proposed injunction, the court understands that
6 WIOA grants are essential to the services that Nevada Partners provides. *See* (ECF No. 25).
7 However, courts issue mandatory injunctions only if the facts and law clearly favor the moving
8 party. *Stanley v. University of Southern California*, 13 F.3d 1313, 1319–20 (9th Cir. 1994).
9 Nevada Partners has not shown a likelihood of success on the merits or any serious questions
10 going to the merits of this action. Therefore, any economic hardship that might result cannot
11 sway this factor in favor of a preliminary injunction.

12 Nevada Partners also contends that without an injunction it will suffer deprivation of a
13 constitutional right. (ECF No. 25). This alleged harm is theoretical as it requires the court to
14 assume that there has been a constitutional violation. Without a likelihood of success on Nevada
15 Partners’ due process and equal protection claims, irreparable harm is unlikely. *See Feldman v.*
16 *Arizona Secretary of State’s Office*, 843 F.3d 366, 394 (9th Cir. 2016) (“Because it is not likely
17 [plaintiff] will suffer a violation of her statutory or constitutional rights, she likely has failed to
18 establish that irreparable harm will flow from a failure to preliminarily enjoin defendants’
19 actions.”).

20 *C. Balance of hardships and public interest*

21 Both Nevada Partners and ResCare rely on WIOA grants to provide workforce services.
22 Although issuing an injunction would allow Nevada Partners’ to continue providing services, it
23 would also proportionately decrease ResCare’s operations. Thus, the balance of hardships does
24 not weigh in favor of an injunction. Nevada Partners has also failed to show that the public
25 interest is in its favor because an injunction would have virtually no effect on the ultimate
26 recipients of WIOA benefits.

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